



U.S. Department of Justice

United States Attorney
Southern District of New YorkThe Jacob K. Javits Federal Building
26 Federal Plaza, 37th Floor
New York, New York 10278

MEMO ENDORSED

March 20, 2024

3/21/24

By ECFHonorable Colleen McMahon
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007The Court needs to move
this motion along. Mr. Cohen
needs to file his affidavit
promptly.

Colleen McMahon

Re: *United States v. Rudy Mendoza*, 11 Cr. 974 (CM)

Dear Judge McMahon:

Rudy Mendoza has filed a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his conviction and sentence based in part on allegations of ineffective assistance of counsel by his former defense counsel during the trial and appellate phases of his criminal proceeding. (Dkt. 349). The Government writes on behalf of the parties to provide an update and propose a briefing schedule.

On September 18, 2023, this Court ordered Mendoza to execute and return within 30 days an "Attorney-Client Privilege Waiver (Informed Consent)" form (the "Waiver Form"). (Dkt. 355). On October 24, 2023, this Court docketed the Waiver Form that was signed by Mendoza on September 29, 2023. (Dkt. 357). Because Mendoza did not notarize the Waiver Form, at the Government's request, on November 7, 2023 this Court ordered Mendoza to execute and return within 60 days a notarized Waiver Form (the "Notarized Waiver Form"). (Dkt. 359 (the "November 7 Order")). On December 5, 2023, this Court docketed the Notarized Waiver Form signed by Mendoza on November 22, 2023. (Dkt. 360). The Court's receipt of the Notarized Waiver Form triggered the provision of the Court's November 7 Order which requires certain individuals to give sworn testimony, within 60 days, in the form of an affidavit, addressing the allegations of ineffective assistance of counsel made by Mendoza. On December 21, 2023, the Court appointed Jeffrey Pittell, Esq. to represent Mendoza in connection with his pending motion.

To date, the Government has received affidavits from many—but not all—of the individuals subject to the Court's November 7 Order, and the Government has docketed any affidavits that were not filed on ECF by the affiant. Below is a table reflecting the status of each individual's affidavit.

Individual	Role	Affidavit Status
James A. Cohen	Former trial counsel	Not yet received
Michael W. Martin	Former trial counsel	Dkt. 367

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED

DOC #:

FILED: 3/21/24

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Individual	Role	Affidavit Status
Giuliana Graham	Graduated Fordham Law student who was not yet admitted	Dkt. 363
Justin Amirian	Fordham Law student legal intern	Dkt. 362
Kharis Belgrave	Fordham Law student legal intern	Not yet received
Richard Hendrix	Fordham Law student legal intern	Dkt. 364
Joseph Jacobs	Fordham Law student legal intern	Dkt. 365
Anna Makatche Cadet	Fordham Law student legal intern	Dkt. 366
Jenna Mintzer Benton	Fordham Law student legal intern	Not yet received
Glenn Andrew Garber	Former appellate counsel	Dkt. 361


As outlined in the Government's August 31, 2023 letter, an expansion of the record—in the form of statements from prior counsel—is necessary before the Government can respond to Mendoza's allegations of ineffective assistance. (*See* Dkt. 352). This is particularly important with respect to the statements of James A. Cohen and Kharis Belgrave, who Mendoza mentions repeatedly by name in his motion and other correspondence, including his February 7, 2024 letter to the Court. (Dkt. 368). The Government cannot adequately respond to Mendoza's 2255 motion in the absence of these affidavits.

Accordingly, the parties have conferred and propose the following briefing schedule: (1) the Government's response to Mendoza's 2255 motion to be due 60 days after the docketing of the outstanding affidavits from James A. Cohen, Kharis Belgrave, and Jenna Mintzer Benton; and (2) Mendoza's reply to be due 60 days after the Government's response.

The Government has contacted James A. Cohen and Jenna Mintzer Benton—and has attempted to contact Kharis Belgrave—to make them aware of the Court's November 7 Order and will continue these efforts. If the outstanding affidavits are not received within 90 days of the writing of this letter, the parties will provide a further update to the Court at that time.

Respectfully submitted,

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United States Attorney

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Cc: Jeffrey Pittell
James A. Cohen
Kharis Belgrave
Jenna Mintzer Benton